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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,078	10/05/2001	Evren Eryurek	P32.12-0019	4936

7590                      04/21/2004  
**Judson K. Champlin**  
**WESTMAN CHAMPLIN & KELLY**  
 International Centre - Suite 1600  
 900 South Second Avenue  
 Minneapolis, MN 55402-3319

EXAMINER

VOELTZ, EMANUEL T

ART UNIT	PAPER NUMBER
2121	

2121

DATE MAILED: 04/21/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

ok

**Office Action Summary**

Application No.

09/972,078

Applicant(s)

ERYUREK ET AL.

Examiner

Emanuel T. Voeltz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 05 October 2001.
- 2a)  This action is FINAL.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-30 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.
  - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
  - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9 Total.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_.



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## Examiner's Detailed Office Action

This action is in response to patent application number 09/972,078, filed October 5, 2001, which is a continuation of U.S. Serial No. 09/303,869, now U.S. Patent No. 6,397,114 B1, which is a divisional of U.S. Serial No. 08/623,569, now U.S. Patent 6,017,143.

Claims 1-30 have been examined.

## Information Disclosure Statement

The information disclosure statements (IDS) submitted on December 12, 2001, February 19, 2002, March 18, 2002, April 3, 2002, April 15, 2002, May 15, 2002, June 19, 2002, September 3, 2002 and September 30, 2002 are all in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner is considering the information disclosure statements.

## Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-52 of U.S. Patent No. 6,397,114 B1.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the patent set forth an inference engine means to determine the root cause diagnosis, wherein the instant application is using a model to do the same. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute a model scenario for determining root causes in an open loop control system rather than an inference engine. Both the modeling and the inference engine techniques are very much similar to one another. There would be no unexpected results from using one technique versus the other.

### Correspondence Information

Any inquiries concerning this communication or earlier communications from the examiner should be directed to **Emanuel Todd Voeltz** who may be reached via telephone at **(703) 305-4563**. The examiner can normally be reached Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. eastern standard time.

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If you need to send an Official facsimile transmission, please send it to **(703) 872-9306**.

If you would like to send a Non-Official (draft) facsimile transmission the fax is **(703) 746-5104**.

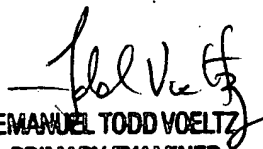
If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor,

**Anthony Knight**, may be reached at **(703) 308-3179**.

Any response to this office action should be mailed too: **Director of Patents and Trademarks Washington, D.C. 20231**.

Moreover, hand-delivered responses should be delivered to the Receptionist, located on the **fourth floor of Crystal Park 11, 2121 Crystal Drive Arlington, Virginia**.

*Emanuel Todd Voeltz*  
Primary Patent Examiner  
Art Unit 2121  
United States Department of Commerce  
Patent & Trademark Office

  
**EMANUEL TODD VOELTZ**  
**PRIMARY EXAMINER**